

SUBJECT: Mental Health Evaluations of Members of the Armed Forces

References: (a) DoD Directive 6490.1, "Mental Health Evaluations of Members of the Armed Forces," September 14, 1993 (hereby canceled)
(b) Section 546 of Public Law 102-484, "National Defense Authorization Act for Fiscal Year, 1993," October 23, 1992
(c) DoD Directive 7050.6, "Military Whistleblower Protection," August 12, 1995
(d) DoD Instruction 6490.4, "Requirements for Mental Health Evaluations of Members of the Armed Forces," August 28, 1997
(e) through (l), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a).
2. Updates policy and assigns responsibilities for referral, evaluation and management of Service members directed for mental health evaluations, including:
 - a. Protection of the rights of Service members, in accordance with references (b) and (c), referred by their commanding officers for mental health evaluations and for inpatient hospitalization.
 - b. Prohibition of the use of referrals by commanding officers for mental health evaluations in reprisal against whistleblowers for disclosures protected by references (b) and (c).
 - c. Requirement that commanding officers be alert to potentially dangerous Service members and take actions aimed at reducing danger to both the Service member and the general public.
 - d. Establishment of standards for mental health care providers to carefully assess risk for, and to take actions to prevent, whenever possible, dangerous behavior.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments (including the U.S. Coast Guard when it operates as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (IG, DoD), the Uniformed Services University of the Health Sciences (USUHS), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

1. Training shall be provided to all Service members on the recognition of Service members who may require mental health evaluation for imminent dangerousness, based on the Service member's behaviors or apparent mental state.

2. Referral Processes for Mental Health Evaluation

a. The responsibility for determining whether or not referral for mental health evaluation should be made under the standards set forth in this section rests with the Service member's designated commanding officer at the time of the referral.

b. Routine Referrals. Prior to referral of a Service member for a routine (non-emergency) mental health evaluation, the commanding officer first shall consult with a mental healthcare provider, or other healthcare provider, if a mental healthcare provider is not available, in accordance with subsection D.3., below, and DoD Instruction 6490.4 (reference (d)).

c. Emergencies

(1) The commanding officer shall refer a Service member for an emergency mental health evaluation as soon as is practicable whenever a Service member, by actions or words, such as actual, attempted or threatened violence, intends or is likely to cause serious injury to himself, herself or others and when the facts and circumstances indicate that the Service member's intent to cause such injury is likely and when the commanding officer believes that the Service member may be suffering from a severe mental disorder.

(2) Prior to transporting a Service member for an emergency evaluation, or shortly thereafter, if time and the nature of the emergency does not permit, the commanding officer shall consult with a mental healthcare provider, or other healthcare provider if a mental healthcare provider is not available, at the medical treatment facility where the Service member is transported. The purpose of this consultation shall be to communicate the circumstances and observations about the Service member that led the commanding officer to believe that the Service member's behavior constituted an emergency. The commanding officer shall forward a memorandum by facsimile, overnight mail or courier documenting the information discussed.

d. The commanding officer shall take precautions to ensure the safety of the Service member and others, pending arrangements for and transportation to the evaluation.

e. If clinically indicated, a Service member shall be admitted to a psychiatric unit (or medical unit, if a psychiatric unit is not available) for inpatient evaluation or treatment under subsection D.5., below. The final decision to admit a Service member rests solely with a mental healthcare provider granted hospital admitting privileges. If a mental healthcare provider is not available, the member may be admitted by any healthcare provider with admitting privileges.

f. Commanding officers, in fulfilling their responsibilities pursuant to paragraphs D.2.a.-c., above, shall consider recommendations that result from inquiries conducted in accordance

with (IAW) the Family Advocacy Program, operated under the authority of DoD Directive 6400.1 (reference (e)) and referral and rehabilitation programs for alcohol and drug abusers, operated under the authority of DoD Directive 1010.4 and DoD Instruction 1010.6 (references (f) and (g)).

3. Protections of the Rights of Service Members Against Improper Referrals for Mental Health Evaluations

a. Legal protections of the rights of Service members against improper referrals for mental health evaluations, as set forth in Pub. L. No. 102-484 (1992), Section 546 (reference (b)), this Directive, and DoD Instruction 6490.4 (reference (d)) shall be followed.

b. No person may refer a Service member for mental health evaluation as a reprisal for making or preparing a lawful communication to a Member of Congress, any appropriate authority in the chain of command of the Service member, an IG or a member of a DoD audit, inspection, investigation or law enforcement organization.

c. No person may restrict a Service member from lawfully communicating with an IG, attorney, Member of Congress, or other person about the Service member's referral for a mental health evaluation.

d. Any violation of paragraph D.3.b. or c., above, by any person subject to the Uniform Code of Military Justice (UCMJ) is punishable as a violation of Article 92 of the UCMJ (reference (h)). Any violation of these paragraphs by a civilian employee is punishable under regulations governing civilian disciplinary or adverse actions.

e. The specific procedures required by paragraph D.3.a., above, apply to mental health evaluations directed by a Service member's commanding officer as an exercise of the commanding officer's discretionary authority. Evaluations not covered by these procedures include voluntary self-referrals; responsibility and competency inquiries conducted under the Rule for Court Martial 706 of the Manual for Courts-Martial (reference (i)); interviews conducted IAW the Family Advocacy Program operated under the authority of reference (e); interviews conducted IAW drug or alcohol abuse rehabilitation programs operated under the authority of reference (f) and reference (g); diagnostic referrals requested by non-mental healthcare providers not part of the member's chain of command as a matter of independent clinical judgment and when the Service member consents to the evaluation; and evaluations expressly required by applicable Service regulation, without discretion by the Service member's commanding officer, for special duties or occupational classifications.

4. Clinical Evaluations of Imminently Dangerous Service Members. Evaluations shall be conducted in a manner consistent with applicable clinical standards of care, as supplemented by requirements or guidelines established by the Assistant Secretary of Defense for Health Affairs (ASD(HA)), concerning authorized providers, clinical standards and procedures, and medical records documentation.

5. Protections of the Rights of Service Members Against Improper Hospitalization

a. Voluntary Admission. Voluntary hospital admission is appropriate if the provider, privileged to admit psychiatric patients, determines that admission is clinically indicated, and the Service member has the capacity to make an informed decision about treatment and hospitalization, and voluntarily consents.

b. Involuntary Admission. An involuntary hospital admission is appropriate only when a provider, privileged to admit psychiatric patients, makes a reasoned, good faith clinical judgment that the Service member has, or likely has, a severe mental disorder and poses a danger to himself, herself and/or others, such that the evaluation or treatment cannot reasonably be provided by a less restrictive level of care or when less intensive treatments would result in inadequate medical care. Hospitalization is appropriate only when consistent with the least restrictive alternative principle under the American Psychiatric Association's guidelines per reference (j).

c. Continued Involuntary Psychiatric Hospitalization.

(1) Involuntary psychiatric hospitalization for continued evaluation and/or treatment, beyond an initial period of evaluation or stabilization not to exceed 72 hours, is appropriate only when a provider makes a reasoned, good faith clinical judgment that:

(a) The Service member is suffering from a serious mental disorder; and

(b) The Service member is at significantly increased risk for imminently dangerous behavior; and

(c) There is a reasonable prospect that the condition is treatable at the medical facility; and

(d) The Service member refuses continued inpatient treatment, or lacks the mental capacity to make an informed decision about continued inpatient treatment.

(2) The provider conducting the review described in subparagraph D.5.c.(1), above, shall be an impartial, disinterested, privileged psychiatrist, or other medical officer if a psychiatrist is not available, not in the Service member's chain of command, of the rank of O-4 or greater or civilian equivalent, who shall be appointed by the medical treatment facility (MTF) commanding officer.

6. Recommendations to Commanding Officers. When a mental healthcare provider returns a Service member to his or her command, either following an outpatient evaluation or upon discharge from inpatient status for which dangerousness was an issue, the provider shall make written recommendations to the Service member's commanding officer about, at least, the following three issues:

a. Proposed Treatments. Treatments shall be based upon the potential for therapeutic benefit as determined by the mental healthcare provider. Serial clinical assessments and mental

status examinations shall be performed, with or without specific therapies, to assess the Service member's on-going risk of dangerousness until the Service member is judged clinically to be psychologically stable and no longer at significant risk of becoming imminently dangerous.

b. Precautions. Recommendations shall be based on the doctoral-level mental healthcare provider's good faith clinical judgment of the need for, and feasibility of, reducing or eliminating the Service member's ability to cause injury to himself, herself or another; or for avoiding any precipitating events that might lead to such injury. Recommendations for precautions shall be considered especially in cases of those Service members who have demonstrated the potential to become dangerous in the past, as evidenced by violent or destructive behavior. Recommendations for precautions may include, but are not limited to, an order to move into military barracks for a given period; an order to avoid the use of alcohol; an order not to handle firearms or other weapons; or an order not to contact a potential victim or victims.

c. Fitness and Suitability for Continued Service. The mental healthcare provider shall advise the commanding officer about a recommendation for return of the Service member to duty, referral of the Service member to a Medical Evaluation Board for processing through the Disability Evaluation System, or administrative separation of the Service member for personality disorder and unsuitability for continued military service.

(1) If the Service member is clinically determined to not meet retention standards as defined in DoD Directive 1332.18 (reference (k)) based upon a DSM IV Axis I or Axis III medical condition under reference (l), a medical board report shall be forwarded to the Service's Physical Evaluation Board for determination of fitness for continued military service.

(2) If the Service member is clinically determined to be unsuitable for continued service based upon a DSM IV Axis II diagnosis of personality disorder under reference (l), which is sufficiently severe so as to preclude satisfactory performance of duty, a summary of the mental health evaluation and recommendation for routine administrative separation shall be forwarded to the Service member's commanding officer. If the Service member has shown a pattern of imminently dangerous behavior (more than one episode) as documented in personnel and/or medical records and, therefore, is considered to be potentially dangerous, a recommendation for expeditious administrative separation shall be forwarded to the Service member's commanding officer.

7. Duty to Take Precautions Against Threatened Injury

a. Any Service member who has been admitted to a psychiatric ward voluntarily or involuntarily for a comprehensive mental health evaluation or treatment and for whom dangerousness was an issue, shall, before discharge, receive a thorough evaluation and mental status examination to ensure that the Service member is not imminently dangerous.

b. In any case in which a Service member has communicated to a privileged healthcare provider an explicit threat to kill or seriously injure a clearly identified or reasonably identifiable person, or to destroy property under circumstances likely to lead to serious bodily injury or death, and the Service member has the apparent intent and ability to carry out the threat, the

responsible healthcare provider shall make a good faith effort to take precautions against the threatened injury. Such precautions may include, but are not limited to, notification of the Service member's commanding officer; notification of military and/or civilian law enforcement authorities where the threatened injury most likely may occur; notification of a potential victim or victims; notification of and recommendations to commanding officers about precautions under paragraph D.6.b., above; or clinical treatments. The provider shall inform the Service member and document in the medical record that these precautions have been taken.

8. Commanding Officer Actions

a. Whenever a privileged mental healthcare provider makes a recommendation to the Service member's commanding officer under subsection D.6., above, the commanding officer shall make a written record of the actions taken and reasons therefore.

b. Whenever a mental healthcare provider recommends to a Service member's commanding officer under paragraph D.6.c., above, that the Service member be separated from military service due to a personality disorder and a pattern of potentially dangerous behavior (more than one episode), that recommendation shall be co-signed by the mental healthcare provider's commanding officer. If the Service member's commanding officer, in turn, declines to follow the recommendation(s) of the MTF's commanding officer, the Service member's commanding officer shall forward a memorandum to his or her commanding officer within two business days explaining the decision to retain the Service member against medical advice.

9. The policy of making referrals for mental health evaluations under the standards set forth in subsection D.3., above, does not modify any authorities or responsibilities about the prevention, investigation, or prosecution of offenses under the UCMJ (reference (h)) or civilian jurisdiction criminal codes.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Health Affairs, under the Under Secretary of Defense for Personnel and Readiness, shall issue an implementing Instruction (DoD Instruction 6490.4 (reference (d))) and shall exercise oversight for this Directive.

2. The Inspector General of the Department of Defense shall:

a. Conduct or oversee an investigation of an allegation submitted by the Service member or the Service member's legal guardian to an IG that the member was referred for a mental health evaluation in violation of this Directive or DoD Instruction 6490.4 (reference (d))).

b. Include assessments reported to him or her that a mental health evaluation was used in violation of this Directive in the IG's semiannual report to Congress.

3. The Secretaries of the Military Departments shall:

a. Implement this Directive and the supplemental Instruction issued by ASD(HA).

b. Establish procedures for reporting to the IG, DoD, any assessments that a mental health evaluation was used in a manner in violation of this Directive.

F. EFFECTIVE DATE

This Directive is effective immediately.

Enclosures - 2

1. References
2. Definitions

REFERENCES, continued

- (e) DoD Directive 6400.1, "Family Advocacy Program (FAP)," June 23, 1992
- (f) DoD Directive 1010.4, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980
- (g) DoD Instruction 1010.6, "Rehabilitation and Referral Services for Alcohol and Drug Abusers," March 13, 1985
- (h) Chapter 47 of title 10, United States Code, "Uniform Code of Military Justice" (UCMJ)
- (i) Manual for Courts-Martial, United States, 1984
- (j) American Psychiatric Association (APA), "Guidelines for Legislation on the Psychiatric Hospitalization of Adults," American Journal of Psychiatry, 140:5, May 1983¹
- (k) DoD Directive 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996
- (l) American Psychiatric Association, "Diagnostic and Statistical Manual of Mental Disorders," Fourth Edition, (DSM IV), Washington, D. C., APA Press, 1994¹

¹ Available from the American Psychiatric Association, 1400 K Street, NW, Washington, DC 20005

DEFINITIONS

1. Imminent Dangerousness. A clinical finding or judgment by a privileged, doctoral-level mental healthcare provider based on a comprehensive mental health evaluation that an individual is at substantial risk of committing an act or acts in the near future that would result in serious personal injury or death to himself, herself, another person or persons, or of destroying property under circumstances likely to lead to serious personal injury, or death, and that the individual manifests the intent and ability to carry out that action. A violent act of a sexual nature is considered an act that would result in serious personal injury.

2. Least Restrictive Alternative Principle. A principle under which a member of the Armed Forces committed for hospitalization and treatment shall be placed in the most appropriate and therapeutic available setting that is no more restrictive than is conducive to the most effective form of treatment, and in which treatment is available and the risk of physical injury and/or property damage posed by such a placement are warranted by the proposed plan of treatment. Such treatments form a continuum of care including no treatment, outpatient treatment, partial hospitalization, residential treatment, inpatient treatment, involuntary hospitalization, seclusion, bodily restraint, and pharmacotherapy, as clinically indicated.

3. Mental Disorder. As defined by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, (reference (1)), a mental disorder is

A clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (e.g., a painful symptom) or disability (e.g., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom. In addition, this syndrome or pattern must not be merely an expectable and culturally sanctioned response to a particular event; for example, the death of a loved one. Whatever its original cause, it must currently be considered a manifestation of a behavioral, psychological, or biological dysfunction in the individual. Neither deviant behavior (e.g., political, religious, or sexual) nor conflicts that are primarily between the individual and society are mental disorders unless the deviance or conflict is a symptom of a dysfunction in the individual, as described above.

4. Mental Health Evaluation. A clinical assessment of a Service member for a mental, physical, or personality disorder, the purpose of which is to determine a Service member's clinical mental health status and/or fitness and/or suitability for service. The mental health evaluation shall consist of, at a minimum, a clinical interview and mental status examination and may include, additionally: a review of medical records; a review of other records, such as the Service personnel record; information forwarded by the Service member's commanding officer; psychological testing; physical examination; and laboratory and/or other specialized testing. Interviews conducted by the Family Advocacy Program or Service's drug and alcohol abuse

DEFINITIONS, continued

rehabilitation program personnel are not considered mental health evaluations for the purpose of this Directive and DoD Instruction 6490.4 (reference (d)).

5. Mental Healthcare Provider. A psychiatrist, doctoral-level clinical psychologist or doctoral-level clinical social worker with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DoD Components.

6. Potential Dangerousness (Not Imminently Dangerous). A clinical finding or judgment by a privileged, doctoral-level mental healthcare provider based on a comprehensive mental health evaluation that an individual has demonstrated violent behavior against himself, herself, another person or persons, or of destroying property under circumstances likely to lead to serious personal injury or death, or possesses long-standing character traits indicating a tendency towards such violence, but is not currently immediately dangerous to himself, herself or to others. A violent act of a sexual nature is considered an act that would result in serious personal injury.